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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

STAY FROSTY ENTERPRISES LLC, an Oregon
Limited Liability Company,

Case No. 3:18-cv-00283-SB

Plaintiff,

DECLARATION OF TODD GILBERT

v.

AMAZON.COM, INC et al

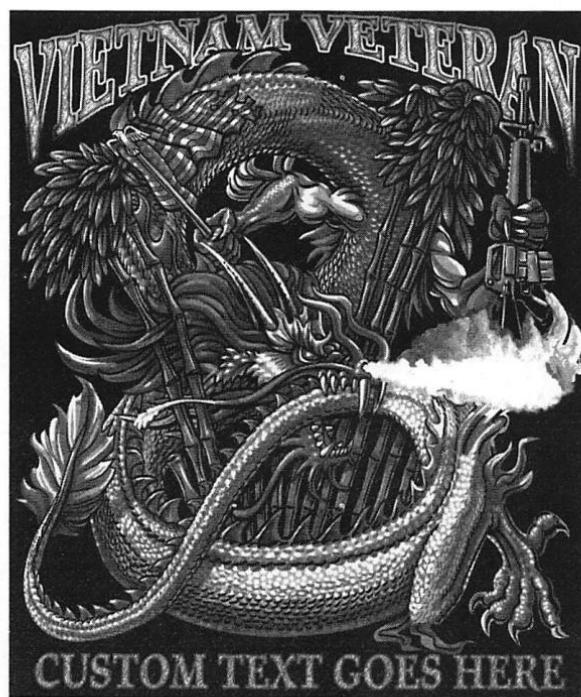
Defendant.

Under penalty of perjury I affirm that the following is true to the best of my knowledge and belief:

1. I am the CFO of Stay Frosty Enterprises, LLC. I was and am the individual primarily responsible for compiling evidence that SunFrog has infringed upon Stay Frosty intellectual property. All of the claims in our Complaint are based upon my personal knowledge and investigation.
2. All of the claims in our Complaint are true and I know that we have a genuine dispute regarding these claims. For example, consider the following copyrighted work entitled “Vietnam Veteran Dragon” which we found on the SunFrog website:



In our complaint, we allege that this design is “strikingly similar” to the design we found on SunFrog.com, which appears like so:



Of course, the exhibit attached to our complaint is a black and white photocopy of our original color artwork. Beside the obvious color difference, this artwork is *exactly* the same. SunFrog's artwork is not just "strikingly similar" to our artwork. It *is* our artwork.

3. In SunFrog's Answer to our complaint, they deny that the artwork we found on their website is similar to our artwork. For each and every paragraph where we allege the art on SunFrog is substantially similar to our art, they deny it.
4. For each and every paragraph in our complaint where we allege that the art on SunFrog is substantially similar to our art, I swear that this is a true statement and I am prepared to testify to this fact and to my personal knowledge concerning the creation of each of these pieces of art.
5. For each and every registered copyright identified in our Complaint, I swear that it is true that Stay Frosty owns all legal right and title to those copyrights.
6. Discovering and attempting to curtail the infringement on SunFrog has required a *substantial* investment of Stay Frosty resources. Our damages are not limited to the pure monetary losses but also to the incredible efforts we have had to go to just to understand what is going on and try to control the damage. We have lost profits, we have lost time, we have lost website traffic, we have lost potential customers, and we have had to hire attorneys to get this issue resolved
7. I have reviewed SunFrog's business model and all of the legal agreements that it binds its users to. I believe that SunFrog provides insufficient resources to screening and preventing copyright infringement on its platform and that it operates with a reckless disregard to the rights of copyright holders. The only impediment to uploading an infringing artwork is a small checkbox requiring uploaders to agree to the terms and conditions, which are not displayed on the same page as the checkbox.

8. I have personally observed each of the alleged infringing items offered for sale by SunFrog on SunFrog.com.
9. SunFrog continues to infringe upon our artworks. I took this screenshot on SunFrog.com today:



This image is a Stay Frosty design identified in our complaint. Even today, more than one year after filing our complaint, SunFrog continues to infringe upon our works.

Respectfully Submitted by:

Dated February 15, 2019

/s/ Todd Gilbert
CFO Stay Frosty Enterprises